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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,556	10/12/2005	Shawn Fowler	THAS126531	6653
26389 7590 05/01/2008 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				
EXAMINER				
O'HERN, BRENT T				
ART UNIT		PAPER NUMBER		
1794				
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05/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,556

Applicant(s)

FOWLER ET AL.

Examiner

BRENT T. OHERN

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claims

1. Claims 1-10 are pending.

WITHDRAWN REJECTIONS

2. The 35 USC 103 rejections of claims 1-10 as being unpatentable over Rue (US 6,048,129) of record in the Office Action mailed 12 October 2007, page 2, paragraph 1, have been withdrawn due to Applicant's amendments in the Paper filed 7 March 2008.

NEW OBJECTIONS

Specification

3. The specification is objected to as failing to provide **proper antecedent basis** for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the phrase "flexible unitary rubber slab" in amended claim 1, line 2 is not supported by the text of the Specification. If there is a unitary rubber slab disclosed in the figures then Applicant shall amend the text of the Specification to include language describing such while being careful to not add new matter.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was

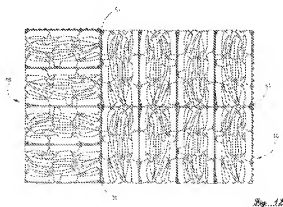
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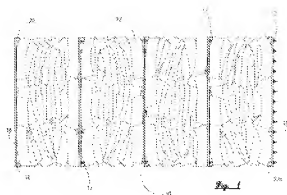
not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase “flexible unitary rubber slab” in claim 1, line 2 is new matter as the original disclosure does not have support for said limitation.

Claim Rejections - 35 USC § 103

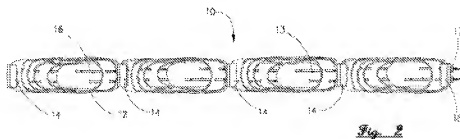
5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rue (US 6,048,129).

Regarding claim 1, Rue ('129) teaches a rubber access mat (*See FIG-12, #10 and col. 6, ll. 12-21.*), comprising: a flexible unitary rubber slab having opposed side edges defining a width and opposed end edges defining a length (*See FIGs 12 and 1, #10 and col. 6, ll. 12-21 where the fabricated mat is interpreted as being a formed flexible unitary rubber slab. Furthermore, whether or not the reinforced recycled tire rubber is called a slab or some other name does not matter as the invention is directed towards a mat, the final product. Additionally, wires are a known means of reinforcement for tire rubber such as that found in Rue ('129).*);





a rigidifying grid of reinforcing metal embedded within the rubber slab and consisting of a plurality of parallel spaced metal extending between the opposed side edges for most of the width of the rubber slab and a plurality of parallel spaced metal rods and spacers extending between the opposed end edges for most of the length of the rubber slab (*See FIG-12 and 2 and col. 6, ll. 12-21 and col. 3, ll. 63-67, parallel spaced metal rods #16 having the cross-sectional configuration as that of wire and metal spacers #14 extending between the sides and end edges.*), however, fails to expressly disclose the reinforcing metal being not less than number ten gauge wire to provide sufficient rigidity while retaining sufficient flexibility to conform to uneven terrain.



However, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made through routine optimization and experimentation to vary the dimensions of the metal wire reinforcement based on the

tools available to pierce the rubber tire pieces and whether very large earth moving equipment, smaller recreational vehicles or humans will be traversing the mat and whether the surface below the mat is level or rugged in order to provide a mat that has the desired mechanical strength and is suitable for use as a mat. Furthermore, if conditions warrant a stronger reinforcement then it would have been obvious to increase the size and amount of reinforcement while at the same time not using excessive amounts of costly material without economic justification. Additionally, Applicant has not disclosed any criticality as to any particular geometric dimension of the wire.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide a reinforced mat with the above dimensions and spacing in order to provide a mat suitable for the intended use.

Regarding claim 2, Rue ('129) teaches the mat discussed above, however, fails to expressly disclose wherein the wire is steel.

However, Rue ('129) teaches wherein the reinforcing wire is made of metal (*See col. 2, ll. 57-61.*) for the purpose holding together the rubber members (*See col. 2, ll. 57-61.*). Furthermore, it is well known to a person of ordinary skill in the art at the time Applicant's invention was made that steel is a metal and steel is a widely used reinforcing material for rubber structures.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use steel as a reinforcing material in order to hold the rubber members together.

Regarding claim 3, Rue ('129) teaches wherein the rubber slab is made from

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recycled vehicular tires (*See col. 3, ll. 66-67.*).

Regarding claim 4, Rue ('129) teaches wherein the wires extending between the opposed side edges and the wires extending between the opposed end edges are the same gauge of wire (*See FIG-1 where #16 are clearly of the same gauge wire.*).

Regarding claim 5, Rue ('129) teaches wherein the wires extending between the opposed side edges and the wires extending between the opposed end edges are the different gauges of wire (*See FIG-1 where #16 and #14 are clearly of different gauges.*).

Regarding claim 6, Rue ('129) teaches wherein the wires extending between the opposed side edges and the wires extending between the opposed end edges have the same relative spacing (*See FIGs 12 and 1 where #16 have the same spacing since they are the same mats oriented transversely to each other.*).

Regarding claim 7, Rue ('129) teaches wherein the wires extending between the opposed side edges and the wires extending between the opposed end edges have different relative spacing (*See FIGs 1 and 12 where #14 and #16 have different spacing.*).

Regarding claims 8-10, Rue ('129) teaches the mat discussed above, however, fails to expressly disclose wherein the wires extending between the opposed side edges have a number six/(ten) gauge and a relative spacing of approximately two inches and the wires extending between the opposed end edges have a number three/(six)/(ten) gauge and a relative spacing of approximately three/(two) inches.

However, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made through routine optimization and

experimentation to vary the dimensions and spacing of the wires in order provide a mat that has the desired mechanical strength and is suitable for use as a mat.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide a mat with the above dimensions and spacing in order to provide a mat suitable for the intended use.

ANSWERS TO APPLICANT'S ARGUMENTS

6. In response to Applicant's arguments (*p. 4, para. 4 of Applicant's Paper filed 7 March 2008*) that Applicant did not intend its slab or recycled tire rubber to include the reinforced joined recycled tire rubber as taught by Rue ('129), it is noted that Applicant is invited to explain what Applicant intends for slab to mean and where support for said interpretation in the Specification is found.

7. In response to Applicant's arguments (*p. 4, para. 5 to p. 5, para. 2 of Applicant's Paper filed 7 March 2008*) that the metal reinforcement as taught by Rue ('129) does not have the same shape and dimensions as Applicant claims and lacks the requisite rigidity and flexibility, it is noted that the Examiner concurs with said conclusion regarding the specific shape and dimensions, however, the current rejections of the amended claims is based on obviousness, not anticipation. Independent claim 1 teaches a minimum diameter but not a maximum dimension.

Whether or not the metal reinforcement as taught by Rue ('129) is called a rod or a wire does not matter when some of its members have the same cross sectional shape and made of the same material as a wire. Furthermore, whether or not the reinforcing material has a circular or rectangular cross section shape does not matter since both

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cross sections function in the same way to accomplish the same result. Additionally, Applicant has not set forth any criticality of a circular cross sectional reinforcement over other reinforcements with other shapes.

Additionally, as discussed above, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to vary the dimensions of the metal wire reinforcement based on the tools available to pierce the rubber tire pieces and whether very large earth moving equipment, smaller recreational vehicles or humans will be traversing the mat and whether the surface below the mat is level or rugged in order to provide a mat that has the desired mechanical strength and is suitable for use as a mat. If conditions warrant requiring more or less rigid/flexible stronger/weaker reinforcement then it would have been obvious to increase/decrease the size and amount of reinforcement while not using excessive amounts of costly material without economic justification.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT T. OHERN whose telephone number is (571)272-0496. The examiner can normally be reached on Monday, Tuesday and Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 24, 2008
/Brent T O'Hern/
Examiner, Art Unit 1794

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794